

NO. 89-1654

IN THE SUPREME COURT OF THE  
UNITED STATES

OCTOBER TERM, 1989

STATE OF ALABAMA

PETITIONER,

V.

DOUGLAS FREEMAN

RESPONDENT.

ON PETITION FOR A WRIT OF CERTIORARI  
TO THE SUPREME COURT AND  
COURT OF CRIMINAL APPEALS OF ALABAMA

PETITIONER'S REPLY TO THE  
BRIEF IN OPPOSITION TO THE PETITION  
OF

DON SIEGELMAN  
ATTORNEY GENERAL

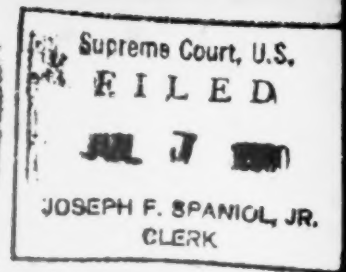
AND

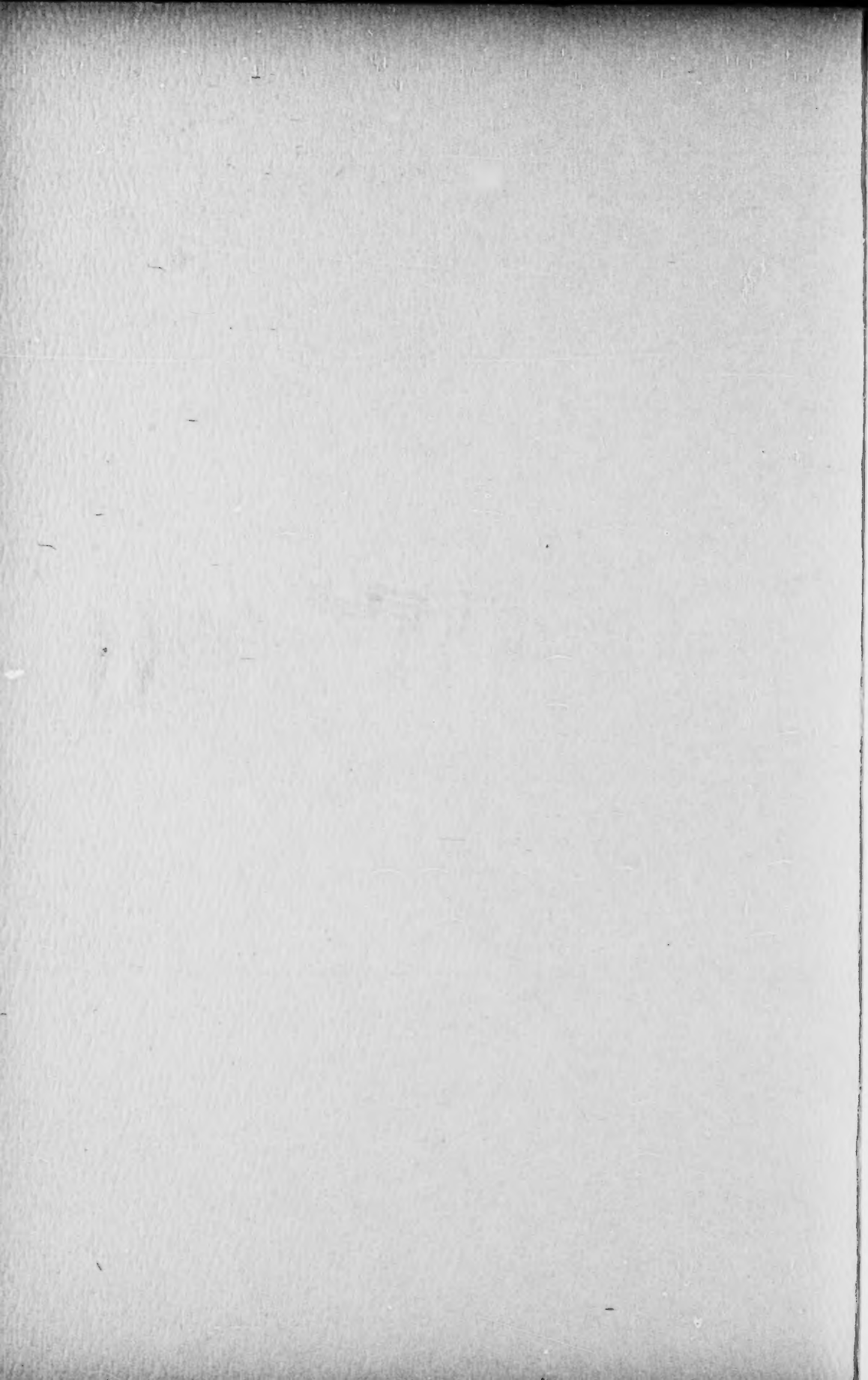
JOSEPH G. L. MARSTON, III  
ASSISTANT ATTORNEY GENERAL

ATTORNEYS FOR PETITIONER

ADDRESS OF COUNSEL

Office of the Attorney General  
Alabama State House  
11 South Union Street  
Montgomery, Alabama 36130  
(205) 242-7300





## TABLE OF CONTENTS

	<u>PAGES</u>
TABLE OF CONSTITUTIONAL PROVISIONS.....	ii
REPLY ARGUMENT.....	1
CONCLUSION.....	3
CERTIFICATE OF SERVICE.....	5

TABLE OF CONSTITUTIONAL PROVISIONS

PAGE(S)

Alabama Constitution, 1901,

Section 5..... 1

United States Constitution

Amendment 4..... 1-4

## REPLY ARGUMENT

The Respondent, while taking no issue with the substantive points raised by the petition, argues that the petition should be denied, because the Respondent's motion to suppress in the Circuit Court of Montgomery County, Alabama, was based on both the United States Constitution, Amendment Four<sup>1</sup> and Alabama Constitution, Section five.<sup>2</sup> The Petitioner readily

---

1. "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

2. "That the people shall be secure in their persons, houses, papers, and possessions from unreasonable seizure or searches, and that no warrants shall issue to search any place or to seize any person or thing without probable cause, supported by oath of affirmation."

acknowledges that, "...there is not a dimes worth of difference between the two Constitutional provisions...."

(Respondent's Brief, page 3) But, the Respondent claims that the Alabama Courts might have decided this case under the State Constitution.

There are many arguments which could be advanced against the Respondent's position but we will advance only one, since it is the simpliest and is conclusive on this point: Regardless of what provisions the State Courts might have applied to this case, the only one they actually applied was Amendment Four to the Constitution of the United States.

The Trial Court's order cited the Fourth Amendment twice as grounds for its decision. (Appendix "A" to the Petition, pages 42-43) More conclusively, the Trial Judge did not

mention any other Constitutional provision, statute, court opinion, court rule, or legal text in support of his conclusion. His opinion and decision rested on the Fourth Amendment to the Constitution of the United States and no other authority. The Alabama Appellate Courts issued no opinions and therefore cited no authority at all.

There is no basis for a claim that the decision of the Alabama State Courts are based on anything except an indefensible interpretation of the Fourth Amendment.

#### CONCLUSION

In conclusion your Petitioner, the State of Alabama, again respectfully submits that in this case the Court of Criminal Appeals and Supreme Court of

Alabama, decided two questions under the Fourth Amendment in a manner which conflicts sharply with the teachings of this Honorable Court. In addition, this case presents important matters which this Honorable Court has never had the opportunity to address, but which this Court ought to address.

For these reasons, Your Petitioner again prays that this Honorable Court will issue the writ of certiorari and will review the matters complained of and reverse the decisions of the said Courts of Alabama.

Respectfully submitted,

DON SIEGELMAN  
ATTORNEY GENERAL  
BY:

---

JOSEPH G. L. MARSTON, III  
ASSISTANT ATTORNEY GENERAL



CERTIFICATE OF SERVICE

I, Joseph G. L. Marston, III,  
Assistant Attorney General of Alabama, a  
member of the Bar of the Supreme Court  
of the United States and one of the  
Attorneys for the State of Alabama,  
Petitioner, hereby certify that on  
this \_\_\_\_\_ day of ~~June~~, 1990, I did  
serve the requisite number of copies of  
the forgoing on the Attorneys for  
Douglas Freeman, Respondent, by mailing  
the same to said Attorneys, first class  
postage prepaid and addressed as follows:

Honorable Bob E. Allen  
Attorney at Law  
640 South McDonough Street  
Montgomery, Alabama 36104

Honorable James M. Fullan, Jr.  
Attorney at Law  
205 North Twentieth Street  
Suite 610, Frank Nelson Building  
Birmingham, Alabama 35203

---

JOSEPH G. L. MARSTON, III  
ASSISTANT ATTORNEY GENERAL  
OF ALABAMA

ADDRESS OF COUNSEL: -  
Office of the Attorney General  
Alabama State House  
11 North Union Street  
Montgomery, Alabama 36130  
(205) 242-7300

2157P

